

THE CHAIRMAN: Does any other delegate desire to speak in opposition?

Delegate Henderson.

DELEGATE HENDERSON: I would like to say that perhaps Mr. Bamberger is not aware of the present form of section 5.31, I believe it is, the rule making power, which differs from the Convention draft. It is now left to concurrent power so that the last one who speaks on the subject would have the final say. That could lead to an endless chain, of course, but it is hoped that this would be able to be worked out. If the legislature should prescribe the panels, I think it would be in the first place a rather delicate matter for the Court of Appeals to tell them no, and if they did tell them no, the legislature would have the option of changing it back and putting in the panels.

In a field which is so primarily a matter of judicial administration and convenience, it seems to me that we should trust the rules of the Court of Appeals and its rule making power to do this sort of thing. Mr. Bamberger is also a member of the Rules Committee and he knows with what diligence that body operates and how representative it is of the sentiments throughout the State. I hope that the amendment will not prevail.

THE CHAIRMAN: Is there any other delegate who desires to speak to the amendment?

Delegate Johnson.

DELEGATE JOHNSON: May I speak in favor of the amendment in this way; it is really an answer to the statement, and perhaps in contradiction to the statement made by Delegate Henderson.

Rule 5.31, whereas it does in fact provide that there will be concurrent rule making power between the legislature and the court, by virtue of its first phrase, where it states, "except as to matters specifically provided by this Constitution to be prescribed by rule," means that wherever the term "rule" is used in the Constitution and specifically in Article V, it is exclusively rule-making power in the court. Therefore, Delegate Bamberger's argument, and his amendment, is well taken.

THE CHAIRMAN: Does any delegate desire to speak in opposition?

Delegate Dukes.

DELEGATE DUKES: I rise to speak in opposition to the amendment. There

seems to be some inference that there might be a direct relation between multiples of three on the bench and being able to sit in three-man panels. I should think it would be immediately obvious that five judges could use a three-man panel system equally as well as six or seven or eight judges. It means that on those days when only three judges are sitting the other two judges could be clearing up decisions; or on a day when one or two judges might be absent or sick, the docket could proceed.

They do not need to make panels out of six or nine to augment the three-man panel. One or two judges would give you a multiple number of different possibilities of panels, and, of course, on those days when the full number of judges were not being used, the others could be clearing up opinions and generally, the caseload.

I do not think that we need to consider anything other than who is best able to determine on which days and in what way a three man panel could be used. It seems clear to me that the court itself is in the best position to make that judgment.

THE CHAIRMAN: Does any other delegate desire to speak in favor?

DELEGATE GLEASON: Mr. Chairman.

THE CHAIRMAN: Delegate Gleason.

DELEGATE GLEASON: Mr. Chairman, I would hope that the delegates would start getting a little concerned with the concentration of power in the judiciary, and I urge upon them a careful consideration of this amendment.

I do not think that any of these provisions in this article can be taken by itself, and we have to consider where this article fits in the overall context of the Committee's recommendations. One of their recommendations, of course, is that these judges sit for ten years, that there be no political opposition and contest, but rather a screening process. To that extent we have removed the political check of these appointments.

We do not tell the executive branch that it can do anything it wants, we do not tell the governor that he can set up his executive department, put it into effect, and that that is it. We say that he can only do so pursuant to law passed by the General Assembly.

Take the legislative branch: we do not say that anything that it wants to put into a law will become law. We say that pro-